KC MODEL UNITED NATIONS 2023

UNITED NATIONS COMMISSION ON THE STATUS OF WOMEN

BACKGROUND GUIDE

AGENDA

DELIBERATING UPON REPRODUCTIVE RIGHTS AND HEALTH OF WOMEN WITH SPECIAL EMPHASIS ON MARITAL RAPE

LETTER FROM THE EXECUTIVE BOARD

DEAR PROSPECTIVE PARTICIPANTS,

It is an honor to welcome you all to **KCMUN MUN, 2023** and to the committee, **United Nations Commission on status of women**. The agenda concerning the committee for this year is **"Deliberating upon reproductive rights and health of women with special emphasis on marital rape''.** My name is Aasmi Abrol, and I am a proud alumnus of the KC International School. I started Munning when I was in 8th grade, JKMUN, 2016 edition being my very first. From that time to now, there has been no looking back when it comes to conferences and conclaves. I am a law student by profession and the world of debating has always fascinated me and encouraged me towards creative thinking and a positive mindset. Talking about the word feminism let me remind you all that feminism on a logical and apparent terms means giving equal opportunities to men and women, both. However, rather than saying that individual men oppressed women, we see that oppression of women came from underlying bias of patriarchal society.

I would like to conclude by saying that we hope to provide you with a hospitable platform where you, with your skills, vast knowledge, and diplomatic courtesies and the zeal to stand and fight for a cause, take an experience with you that doesn't just restrict to the committee room or a particular aspect but enhance and add up to your overall personality, enhancing your skills while you undergo the never ending process of learning. Let's enhance the skill to "Débat.Discuter.Décider".

Regards

Aasmi Abrol

Chairperson (UNCSW)

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HISTORY OF THE COMMITTEE

The Commission on the Status of Women (CSW) is the world's main policy-making body dedicated exclusively to gender equality and the advancement of women.

It is part of the United Nations, and works to promote women's political, economic, civil, social and educational rights.

The CSW also works for equality, development and peace, monitors whether measures are being implemented, and makes sure that gender issues are considered across the UN.

It can also highlight urgent problems, such as the situation of women and girls affected by conflict.

The CSW is instrumental in promoting women's rights, documenting the reality of women's lives throughout the world, and shaping global standards on gender equality and the empowerment of women.

In 1996, ECOSOC in resolution expanded the Commission's mandate and decided that it should take a leading role in monitoring and reviewing progress and problems in the implementation of the Beijing Declaration and Platform for Action, and in mainstreaming a gender perspective in UN activities.

During the Commission's annual two-week session, representatives of UN Member States, civil society organizations and UN entities gather at UN headquarters in New York.

They discuss progress and gaps in the implementation of the 1995 Beijing Declaration and Platform for Action, the key global policy document on gender equality, and the 23rd special session of the General Assembly held in 2000, as well as emerging issues that affect gender equality and the empowerment of women.

Member States agree on further actions to accelerate progress and promote women's enjoyment of their rights in political, economic, and social fields.

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ABOUT THE AGENDA

SEXUAL AND REPRODUCTIVE HEALTH AND HUMAN RIGHTS

Women's sexual and reproductive health is related to multiple human rights, including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination. The Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of Discrimination against Women (CEDAW) have both clearly indicated that women's right to health includes their sexual and reproductive health.

This means that States have obligations to respect, protect and fulfill rights related to women's sexual and reproductive health. The Special Rapporteur on the right to health maintains that women are entitled to reproductive health care services, and goods and facilities that are:

- available in adequate numbers;
- accessible physically and economically;
- accessible without discrimination;

Examples of violations

- Despite these obligations, violations of women's sexual and reproductive health and rights are frequent. These take many forms, including:
- denial of access to services that only women require;
- poor quality services;
- subjecting women's access to services to third party authorization;
- forced sterilization, forced virginity examinations, and forced abortion, without women's prior consent;
- female genital mutilation (FGM); and
- early marriage.

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CAUSES AND CONSEQUENCES OF SEXUAL AND REPRODUCTIVE HEALTH VIOLATIONS

Violations of women’s sexual and reproductive health and rights are often due to deeply engrained beliefs and societal values pertaining to women’s sexuality. Patriarchal concepts of women’s roles within the family mean that women are often valued based on their ability to reproduce.

Early marriage and pregnancy, or repeated pregnancies spaced too closely together—often as the result of efforts to produce male offspring because of the preference for sons—has a devastating impact on women’s health with sometimes fatal consequences. Women are also often blamed for infertility, suffering ostracism and being subjected to various human rights violations as a result.

RELEVANT HUMAN RIGHT STANDARDS

CEDAW (article 16) guarantees women equal rights in deciding "freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."

CEDAW (article 10) also specifies that women’s right to education includes "access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning."

The Beijing Platform for Action states that "the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence."

The CEDAW Committee’s General Recommendation 24 recommends that States priorities the "prevention of unwanted pregnancy through family planning and sex education."

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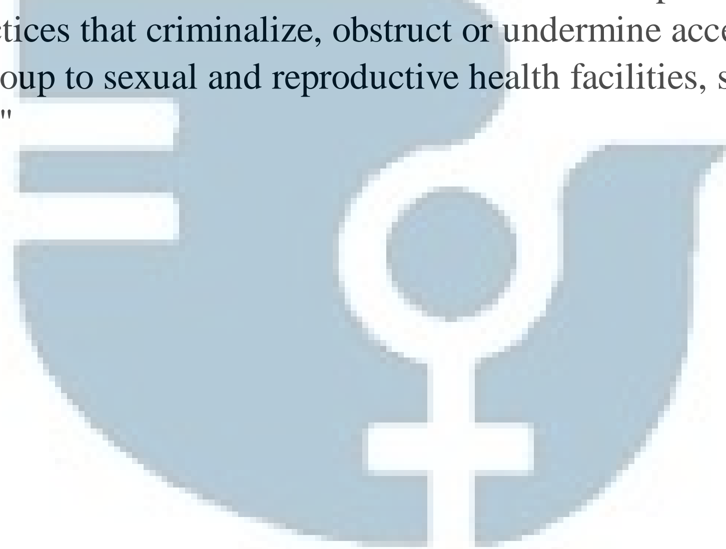
The CESCR General Comment 14 has explained that the provision of maternal health services is comparable to a core obligation which cannot be derogated from under any circumstances, and the States have to the immediate obligation to take deliberate, concrete, and targeted steps towards fulfilling the right to health in the context of pregnancy and childbirth.

The CESCR General Comment 22 recommends States "to repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine access by individuals or a particular group to sexual and reproductive health facilities, services, goods and information."



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GENDER EQUALITY HEALTH INDEX

Since 2013, the Gender Equality Index has been recognized by EU institutions and Member States as a key benchmark for gender equality in the EU. The 6th edition of the Index covers a range of indicators in the domains of society and life most affected by the COVID-19 crisis.

Although Index scores are mostly based on 2019 data, and therefore cannot capture the full impact of the crisis on gender equality, the report provides ample evidence of the pandemic's negative repercussions on women in the domains of work, money, knowledge, time, power and health.

It also addresses the spike in violence against women and how the most disadvantaged and marginalized groups of women and men in society have borne the brunt of the impact.

Being a man or a woman has a significant impact on health, as a result of both biological and gender-related differences. The health of women and girls is of particular concern because, in many societies, they are disadvantaged by discrimination rooted in sociocultural factors. For example, women and girls face increased vulnerability to HIV/AIDS.

Some of the sociocultural factors that prevent women and girls to benefit from quality health services and attaining the best possible level of health include:

- unequal power relationships between men and women;
- social norms that decrease education and paid employment opportunities;
- an exclusive focus on women's reproductive roles; and
- potential or actual experience of physical, sexual and emotional violence.

While poverty is an important barrier to positive health outcomes for both men and women, poverty tends to yield a higher burden on women and girls' health due to, for example, feeding practices (malnutrition) and use of unsafe cooking fuels (COPD).

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MARITAL RAPE LAWS – AN INTERNATIONAL OVERVIEW

INTERNATIONAL BACKGROUND AND ORIGIN

The Implied Consent Theory of Sir Hale was laid in Chief Justice Sir Mathew Hale's The History of the Pleas of the Crown published in 1736. It said, "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract." This theory paved its way not just into the common law system of Britain but also into the legal system of all its colonies.

The Doctrine of Coverture is another principle found in the common law system that provided support to the Implied Consent Theory. According to this doctrine, the legal rights of a woman were subsumed by her husbands upon marriage. This doctrine arises from the legal fiction that the wife and husband were the same people.

A married woman's legal status was feme covert while an unmarried woman's status was feme sole. While an unmarried woman had the right to make contracts on her property, a married woman didn't.

The Doctrine of Coverture was dominant in England until it received backlash in the mid-19th century by the wave of the feminist movement. It was regarded as oppressive, hindering a woman from exercising her legal and financial rights

Marital rape was not considered to be a crime in Britain until the landmark judgement in 1991 of R vs R. After multiple appeals the House of Lords finally ruled against marital rape unanimously, stating that "Nowadays it cannot seriously be maintained that by marriage a wife submits herself irrevocably to sexual intercourse in all circumstances."

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CRIMINALISATION OF MARITAL RAPE IN OTHER COUNTRIES

Poland was the first country to explicitly criminalize marital rape in 1932. Australia, under the influence of the second wave of feminism in 1976 was the first common law country to pass reforms and criminalize marital rape.

Since the 1980's several common law countries have criminalized marital rape like South Africa, Ireland, Israel, Ghana etc. Over the past two decades, several Scandinavian countries and the Communist bloc have followed the suit.

In New York, the Court of Appeal struck down the exception of marital immunity from the Code in 1984. All 50 states of the United States have made marital rape a crime.

In 2002 Nepal criminalized marital rape. The Supreme Court held that the exception of marital rape went against the constitutional right of equal protection before the law and the right to privacy of an individual.

INTERNATIONAL CONVENTION REGARDING MARITAL RAPE

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In 2013, the UN Committee on Elimination of Discrimination Against Women (CEDAW) suggested that India should end marital impunity. Article 1 of CEDAW defines "Discrimination of Women" as "any distinction...made based on sex which has the effect of impairing...the exercise by women, irrespective of their marital status...of human rights and fundamental freedoms in the...social, cultural, civil or any other field".

The marital impunity conferred under the Indian Penal code also contravenes General Recommendation 19, which deemed mental and sexual harm upon women discriminatory in nature.

It notes that sexual and mental harm deprives the woman of equal exercise of human and fundamental rights. General Recommendation 35 adds to General Recommendation 19 and states that marital rape is rated based on lack of free

consent and the presence of coercive measures.

Although India has not signed the optional protocol of CEDAW, it is still obliged to protect women irrespective of their marital status under Article 2(f). Noncompliance with the said provision may attract sanctions from the organization.

By conferring marital immunity, India also violates the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

According to Article 26 of the International Covenant on Civil and Political Rights, the domestic law of the member state should provide equal protection of status and dignity to all citizens irrespective of their status or race. Marital rape discriminates between married and an unmarried woman.

As a member state, India should not derogate from any fundamental right mentioned as per Article 5. India also violates Article 1 of the Universal Declaration of Human Rights because of the discriminatory nature of exception 2 to article 376.

India's law is also in contravention with the Fourth World Conference on Women held in Beijing. The Beijing Action Platform encourages countries to enforce the provision of CEDAW, including the Optional Protocol, and to amend or remove the discriminatory provision in the law of the country.

The 59th session of the Commission of Human Rights in 2003 observed that violence against women constitutes a breach of their fundamental and human rights.

The United Nation has raised flags time and often about the perilous legislation that allow marital rape. UN Women in its flagship annual Progress of the World's Women report urged the member countries to criminalize marital rape. It also deeply criticized the "marry your rapist" law prevalent in various countries.

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PUNISHMENT FOR MARITAL RAPE ACROSS NATIONS

Marital Rape is punishable for a lifetime of the convict., especially if the victim is killed in Liechtenstein, Mongolia, Rwanda.

In Guatemala, the Philippines, Serbia, Grenada marital rape can be punished for up to 30-50 years. Marital rape is punishable with up to 10-30 years of imprisonment in Mozambique, Ecuador, Luxembourg, New Zealand, Greece, Argentina and Monaco.

STATUS IN INDIA

The debate over Marital Rape has been a topic of heated discussion over the last few years. The controversial exception 2 of Article 375 of the Indian Penal Code is currently being debated over in the Delhi High Court.

The exception has been challenged by RIT Foundation, All India Democratic Women Association and two individuals. Opposing the striking down of this exception are the Delhi government, NGO Hridaya Foundation and Amit Lakhani and Ritwik Bisaria of Men Welfare Trust.

Exception 2 of section 375 of the Indian Penal Code states that "Sexual intercourse or sexual acts by a man with his own wife not being under fifteen years of age, is not rape" *
This exception explicitly makes rape on one's wife, above the age of fifteen permissible.

The primary argument for the criminalization of marital rape is that rape committed on a woman is rape, an offence red in teeth and claw. Discrimination between a married woman and an unmarried one does not stand any reasonable nexus and violates the fundamental rights granted to the citizens under Article 14 (Right to Equality) and Article 21 (Right to Life) of the Indian Constitution

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Men's rights activists opine that the criminalization of marital rape may serve as a ground for many women to maliciously lodge a false complaint against their husbands.

They argue that marital rape should not be criminalized as it will serve as a tool for the wife to harass her husband. The male victim will not have enough evidence to prove his innocence as the relation between a wife and her husband is essentially sexual in nature and the prime testimony of the crime will be the wife's complaint.

However it has been rightly pointed out by those in Favour of the criminalization of marital rape that every law has the scope of being misused, and if the legislature were to stop making laws fearing their misuse, then no law would have been enacted to protect the liberty of the citizen.

India already has existing laws against perjury that can be invoked to prevent the law from becoming a tool in the hands of miscreants.

As per reports, Marital Rape is not a crime in only 32 countries of the world. This list includes names like the Republic of Congo, Bangladesh, Pakistan and India. Despite being a progressive country, India has still retained archaic colonial laws. Interestingly England criminalized Marital Rape in 1994.

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FACTORS ASSOCIATED WITH INTIMATE PARTNER VIOLENCE AND SEXUAL VIOLENCE AGAINST WOMEN

Intimate partner and sexual violence are the result of factors occurring at individual, family, community and wider society levels that interact with each other to increase or reduce risk (protective). Some are associated with being a perpetrator of violence, some are associated with experiencing violence, and some are associated with both.

Risk factors for both intimate partner and sexual violence include:

- lower levels of education (perpetration of sexual violence and experience of sexual violence);
- a history of exposure to child maltreatment (perpetration and experience);
- witnessing family violence (perpetration and experience);
- antisocial personality disorder (perpetration);
- harmful use of alcohol (perpetration and experience);
- harmful masculine behaviors, including having multiple partners or attitudes that condone violence (perpetration);
- community norms that privilege or ascribe higher status to men and lower status to women;
- low levels of women's access to paid employment; and
- low level of gender equality (discriminatory laws, etc.).

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Factors specifically associated with intimate partner violence include:

- history of exposure to violence;
- marital discord and dissatisfaction;
- difficulties in communicating between partners; and
- male controlling behaviors towards their partners.
- Factors specifically associated with sexual violence perpetration include:
- beliefs in family honors and sexual purity;
- ideologies of male sexual entitlement; and

- weak legal sanctions for sexual violence.

HEALTH CONSEQUENCES

Intimate partner (physical, sexual and psychological) and sexual violence cause serious short- and long-term physical, mental, sexual and reproductive health problems for women. They also affect their children's health and wellbeing.

This violence leads to high social and economic costs for women, their families and societies. Such violence can:

- Have fatal outcomes like homicide or suicide.
- Lead to injuries, with 42% of women who experience intimate partner violence reporting an injury because of this violence.
- This leads to unintended pregnancies, induced abortions, gynecological problems, and sexually transmitted infections, including HIV. WHO's 2013 study on the health burden associated with violence against women found that women who had been physically or sexually abused were 1.5 times more likely to have a sexually transmitted infection and, in some regions, HIV, compared to women who had not experienced partner violence. They are also twice as likely to have an abortion.
- Intimate partner violence in pregnancy also increases the likelihood of miscarriage, stillbirth, pre-term delivery and low birth weight babies. The same 2013 study showed that women who experienced intimate partner violence were 16% more likely to suffer a miscarriage and 41% more likely to have a pre-term birth.
- These forms of violence can lead to depression, post-traumatic stress and other anxiety disorders, sleep difficulties, eating disorders, and suicide attempts. The 2013 analysis found that women who have experienced intimate partner violence were almost twice as likely to experience depression and problem drinking.
- Health effects can also include headaches, pain syndromes (back pain, abdominal pain, chronic pelvic pain) gastrointestinal disorders, limited mobility and poor overall health.

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- Sexual violence, particularly during childhood, can lead to increased smoking, substance use, and risky sexual behaviors. It is also associated with perpetration of violence (for males) and being a victim of violence (for females).

IMPACT ON CHILDREN

- Children who grow up in families where there is violence may suffer a range of behavioral and emotional disturbances. These can also be associated with perpetrating or experiencing violence later in life.

- Intimate partner violence has also been associated with higher rates of infant and child mortality and morbidity (through, for example, diarrheal disease or malnutrition and lower immunization rates).

SOCIAL AND ECONOMIC COSTS

The social and economic costs of intimate partners and sexual violence are enormous and have ripple effects throughout society.

Women may suffer isolation, inability to work, loss of wages, lack of participation in regular activities and limited ability to care for themselves and their children.

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QUESTIONS TO BE ANSWERED IN THE COMMITTEE

1. How can we ensure that marginalized and vulnerable groups, such as women with disabilities or refugees, have equal access to reproductive healthcare services and protection from marital rape?

2. How can technology and digital platforms be leveraged to provide information and support related to reproductive rights and health, particularly for women in remote or underserved areas?

3. How can healthcare providers be trained and sensitized to address the unique needs of survivors of marital rape and provide them with appropriate support and care?

4. What steps can governments take to ensure that women have access to safe and legal abortion services, and how does this relate to the broader discussion of reproductive rights?

5. How can we ensure that women have full and equal access to reproductive health services and information, regardless of their marital status?

6. What are the primary challenges women face in accessing reproductive healthcare, and how can these barriers be overcome?

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